IN THE HIGH COURT OF JUDICATURE M.P.AT JABALPUR

W.P.NO. 4326 /97

PETITIONER(RESPONDENTS 1 **The State of Chhattisgarh, Through Secretary, Education Department, Collegiate Branch, Raipur, Chhattisgarh**

Amendment incorporated as per Court order dated 11/08/2004

17/11/04
Yashwant Singh
Government Advocate

Saxena.

Versus

RESPONDENTS/PETITIONER:

1. Smt.Gita Bai, wife of Shahdeo aged 56 years.
2. Smt.Chandrika Bai wife of laxmi Prasad aged 49 years.
3. Smt.Rasham Bai Wife of Deocharan aged about ~~xxxxx~~ 47 years.
4. Smt.Shanti Bai aged about 46 years.

All Class IV servants in the Govt. Girls College, Bilaspur.

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... W.P.No. 4326/97 ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: Hon'ble Shri Justice A. K. Patnaik, C.J.
& Hon'ble Shri Justice Satish K. Agnihotri, J.

1.8.2005

Heard Mr. Sanjay S. Agarwal, learned Govt. Advocate for the petitioner /State.

In this writ petition under Article 226/227 of the Constitution of India the State of Chhattisgarh has challenged the order dated 18.3.1997 passed by the State Administrative Tribunal in Transfer Application No. 690/88 (M.P.No. 1814/88).

The facts briefly stated are that the respondents herein filed the aforesaid application claiming that they have been working continuously since their first appointments in the hostel of the Government Girls College. The Respondents No. 1 and 2 were serving since 1975 and rest of the respondents were serving from 1982-83. They had worked continuously until they were terminated from service by orders dated 16.5.1988 and 16.7.1988. The respondents made a prayer before the Tribunal to quash the said orders of termination annexed to the application before the Tribunal as Annexure P/7 and P/8.

The State of Madhya Pradesh filed return before the Tribunal stating therein that the respondents were never employees of the State Government and they were employees under the Warden of the Hostel and they were not being paid from the Govt. fund or contingency fund, but were being paid from the amounts collected from the students of the hostel.

The Tribunal after considering the case of the parties and after considering the law laid down by the Apex Court in (1986) 1 S.C.C. 637, A.I.R. 1987 S.C. 2049, A.I.R. 1987 S.C. 2342 and A.I.R. 1982 S.C. 1473

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

held that the respondents who have been working from very long time in the hostel of the department deserve a direction for consideration for regularization on priority basis against available vacant post or posts becoming available in the near future. They also deserve parity in pay with regular Class IV Government employees similarly situated w.e.f. the date of their respective appointments. In para 12 of the impugned order the Tribunal issued following direction:-

> *"Accordingly, application is allowed. Respondents are directed to consider cases of applicants for regularization within three months, after screening them individually as per eligibility for regularization in accordance with due procedure and rules of the department on availability of vacancies at present or in future. Until such consideration, respondents are further directed to engage applicants in the same work with parity of pay and other facilities at par with similarly situated employees. Respondent No.1 is further directed to pay the difference of the salary together with allowances to the applicants payable to Class IV employees within a period of three months from the date of communication of this order."*

Mr. Sanjay S. Agarwal, learned counsel for the petitioner submits that since the respondents were not Govt. servant and were employees in the hostel of the college and were paid out of funds collected from the students of the hostel, no direction for regularization could have been given by the Tribunal. He further submits that the students themselves have made some complaints against the respondents and the respondents do not deserve consideration for regularization.

(पीछे देखिये)

(28)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

[illegible] का [illegible] के आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Mr. Agarwal does not dispute the position that the hostel was part of the Govt. Girls College. The respondents obviously were not Govt. Servants until their services were regularized. But the law has been well settled in the case of State of Haryana & others Vs. Piara Singh & others (1992) 4 S.C.C. 118 that the engagement of employees for long spells raises a presumption that their services are required on the regular and permanent basis and in such cases the Govt. should frame a scheme of regularization and consider regularization of such employees. In the present case it is not in dispute that two of the respondents were engaged since 1975 and others were engaged since 1982-83. Hence, there was a presumption that their services were required in the hostel. Hence, they deserve to be considered for regularization in accordance with the rules and circulars then prevailing. In case there is some complaint against any of the respondents, the authority considering the respondents for regularization can take into account the said complaints and then decide as to whether or not the respondents could be regularized in accordance with the rules or circulars for regularization.

In our considered opinion this is not a fit case where we should in exercise our extra ordinary jurisdiction interfere with the directions in the order passed by the Tribunal. The writ petition is accordingly dismissed.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge